IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

CRL.A.No. 923 of 1998

CC.586/1996 of JUDL.MAGISTRATE OF FIRST CLASS-I, MUVATTUPUZHA

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APPELLANT/COMPLAINANT:

THE ORIENTAL FINANCE AND CREDIT LTD., VELLOORKUNNAM, MUVATTUPUZHA, REPRESENTED BY ITS PARTNER, SHRI T.A.ZULFIKKER, S/O. ALIYAR, UDINAD HOUSE, KAVUMKARA - VELLOORKUNNAM.

BY ADV. SRI.P.V.SANTHOSH

RESPONDENTS/ACCUSED:

1. BHANUMATHIAMMA, W/O. VISWANATHAN NAIR, KUNNANTHAZHATHU HOUSE, THAZHATHUVADAKARA, MANGAZHA, KOTTAYAM DT.

2. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI.

R2 BY PUBLIC PROSECUTOR SHRI K.C.SANTHOSH KUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY, J.

Crl.Appeal No. 923 of 1998

Dated this the 17th day of January, 2007

Judgment

This appeal is filed against acquittal of the accused under section 256 (1) of the Code of Criminal Procedure for the absence of the complainant on 2.7.1998. The proceedings would show that the complainant was regularly prosecuting the case. However, on one day, the complainant was absent after applying for time, but, the accused was acquitted for the absence of the complainant. Even though Magistrate's court has got power to acquit the accused for the absence of the complainant, if presence of the complainant is absolutely necessary, that power cannot be exercised arbitrarily or mechanically. In this case, complainant applied for time. He was prosecuting the case vigorously. The complaint cannot be dismissed for the absence of the complainant on one day and one more opportunity could have been given.

2. Though notice issued to first respondent was served, she did not appear before this court. In the circumstances of the case, the impugned order is set aside and the matter is remanded to the court below

without expressing any opinion regarding the merits of the case.

Parties shall appear before the trial court on 5.3.2007. The trial court shall also give notice to the counsel for the accused appearing in that court.

Appeal allowed by way of remand.

J.B.KOSHY
JUDGE

vaa

J.B. KOSHY, J.

CRL.APPEAL No.923/98

Judgment

Dated:17th January, 2007